1962

Bela Mae Spratling Parr et al v. Zions First National Bank et al : Reply Brief

Utah Supreme Court

Gustin, Richards & Mattsson; Attorneys for Appellants;
W. D. Beatie, Attorney for Plaintiffs-Respondents;

In the Supreme Court of the State of Utah

RELA MAE SPRATLING PARR, DOROTHY DEANE SPRATLING LOVE, CAROL BETH SPRATLING HENSON, and COLEEN SPRATLING HALL, formerly COLEEN SPRATLING,

Plaintiffs-Respondents,

vs.

ZIONS FIRST NATIONAL BANK, a corporation, successor to Utah Savings & Trust Company, a corporation, administrator of the estate of George Albert Steadman, deceased, also known as George A. Steadman, and ELVINA S. STEADMAN,

Defendants,

EDITH STEADMAN GREEN and SHELDON STEADMAN,

Intervenors-Appellants.

No. 9668

REPLY BRIEF

Appeal from the Judgment of the Third Judicial Court For Salt Lake County, Hon. Stewart M. Hanson, Judge

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CASES CITED

TEXTS

IN THE SUPREME COURT
of the
STATE OF UTAH

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ARGUMENT

George Albert Steadman's ownership of the property in question is a disputed fact and cannot be determined upon a motion for summary judgment.

Under Point I of respondents' brief they call attention to an affidavit of Leonard R. Steadman and use it as a basis for the proposition that George Albert Stead-

man had no interest in the property. The affidavit of Leonard R. Steadman, dated January 8, 1945, approximately four years after the death of George Albert Steadman, merely states that he is a son of Walter Steadman, deceased, and that said Walter E. Steadman, Charles E. Steadman, William H. Steadman and he were partners in 1930. It does not state that George Albert Steadman was not a member of the partnership.

In this connection, we call your attention to the claim of the Farm Credit Administration filed in the estate of George Albert Steadman, deceased, probate No. 23233, on the 25th day of August, 1941. Attached to the claim are copies of promissory notes dated December 26, 1934, at Salt Lake City for $3,000.00, signed Walter Steadman & Sons, wherein appear the signatures of Walter Steadman, Edith R. Steadman, Leonard R. Steadman, Norma E. Steadman, Edith M. Steadman, William H. Steadman, Albert R. Steadman, *George A. Steadman* and Elvina S. Steadman; a note dated September 5, 1934, Soda Springs, for $3,000.00, signed by the same parties; and a note dated October 25, 1934, for $3,000.00, signed Walter Steadman & Sons and all of the parties heretofore named. (Emphasis added.)

In the petition for an order to mortgage the property and settlement of first account there appears on page 2 thereof the following:

> "To pay claim of the United States on feed loan to deceased, presented and allowed herein, (deceased's share only,) $1,500.00"

Page 9 of Exhibit 1 discloses an agreement between

Walter Steadman and others, including George Albert Steadman, and the Utah Copper Company, covering the property involved in this litigation. Page 17 of Exhibit 1 discloses a relinquishment of the right-of-way of Kennecott Copper Corporation to Walter Steadman and others, including George Albert Steadman, covering the same property.

These instruments and notes conclusively show that George Albert Steadman, during his lifetime and at the time of his death, did have an interest in the property involved in this litigation.

Appellants' original brief has set forth their views in regard to Point II, with the exception of the inference that an ominibus clause in the decree of distribution does not distribute after discovered property to the heirs. Respondents have cited *Perry v. McConkie,* 1 Utah 2d 189, 264 P.2d 852. In our opinion, this case does not hold that an omnibus clause does not distribute after discovered property to the heirs. The case merely holds that after discovered property could be subordinate to and subject to possible claims of creditors, taxing authorities and the like. In support of the proposition that an omnibus clause in a decree of distribution does pass title and distribute the property to the heirs, we call the court's attention to the annotation in 120 A.L.R. 630, which cites numerous California and Minnesota cases, also *Latta v. Western Investment Co.* (9 Cir.) 1949 173 F.2d 99 and *Prusa v. Beasley,* Okl. 335 P.2d 346.

CONCLUSION

In conclusion, we respectfully submit that the question of ownership of the property, being a disputed fact, must be submitted to the trial court for determination; that the Statute of Limitations has not run; and that the lower court's decision should be reversed and the case remanded for trial.

Respectfully submitted,

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